


ORDERED.

Dated: August 19, 2019

  
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Karen S. Jennemann  
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)**

In re:

**DANA MICALLEF,**

Case No. 6:18-bk-06259-KSJ  
Chapter 7

Debtor.

\_\_\_\_\_ /

**ORDER SUSTAINING  
TRUSTEE'S OBJECTION TO DEBTOR'S USE OF EXEMPTIONS**

THIS CASE came before the Court for hearing on August 13, 2019 at 9:30 a.m. ("Hearing") upon the Trustee's Objection to Debtor's Use of Exemptions (Doc. No. 75) and Debtor's Response to Trustee's Objection to Debtor's Use of Exemptions (Doc. No. 79). The Court finds:

1. The Debtor, Dana Micallef (the "Debtor") purchased property located at 1888 John Anderson Drive, Ormond Beach, FL 32176 (the "Property") on June 16, 2016 just 846 days prior to filing for Chapter 11 protection under the United States Bankruptcy Code on October 10, 2018. That Chapter 11 was subsequently converted to Chapter 7 on January 23, 2019 (Doc. No. 48)

2. The Debtor claimed a \$700,000.00 Exemption under Fla. Const. Art X, §4(a)(1), Fla. Stat. Ann. §§222.01 and 222.02 (Homestead exemption statute) for the Property which is undisputed to be his primary residence.

3. The purchase price of the Property was \$621,000.00. The Debtor did not own a home prior to the purchase of the Property. The Debtor made substantial improvements to the Property also

during the 846 days prior to filing, increasing the value of the property from the \$621,000.00 purchase price to \$850,000.00. The mortgage due and owing on the Property at the time of filing was \$332,624.97. Market conditions did not contribute significantly to the increase in the value of the Property.

4. On April 20, 2005, Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) which added Section 522(p) to the Bankruptcy Code imposing a limitation on Florida’s unlimited homestead exemption. Section 522(p) provides that “a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate \$160,375.00 in value in ....(D) real or personal property that the debtor or dependent of the debtor claims as a homestead.”

5. A Debtor’s interest in property acquired during the 1215 day period prior to filing includes not only the interest acquired by making a down payment or by paying down the mortgage but also the equity acquired by active conduct that improves the value of the property. The Debtor’s improvements to the Property were active conduct that contributed to the increase in value.

ACCORDINGLY, IT IS

**ORDERED:**

1. The Trustee’s Objection to Debtor’s Use of Exemptions is SUSTAINED.
2. The Debtor’s homestead exemption is limited to \$160,375.00 in accordance with 11 U.S.C. §522(p).
3. All interest in the Property, above and beyond the limit set forth in 11 U.S.C. §522(p) of \$160,375.00, and subject to any mortgages on the Property, is property of the estate and subject to administration by the Chapter 7 Trustee. The Property is more particularly described as:

The Southerly 96.5 feet of the Northerly 191.7 feet as measured along John Anderson Highway, of that portion of Lot 3, lying Westerly of the John Anderson Highway, KINGSTON PARK SUBDIVISION, as per map in Map Book 7, Page 30, Public Records of Volusia County, Florida, together with any and all riparian rights appertaining thereto.

4. The Debtor, Dana Micallef, shall cooperate as needed to facilitate the liquidation of the property and in no way shall he hinder, delay or otherwise interfere with its liquidation.

Attorney, Cynthia E. Lewis, is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the order.